



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** ACCESS for the Handicapped

**File:** B-234233

**Date:** May 15, 1989

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### DIGEST

1. Protest concerning rejection of quotation filed more than 10 working days after protester was orally advised that the product it proposed was unacceptable is untimely.
2. Protest that technical specifications were unduly restrictive of competition is untimely where this alleged impropriety is apparent from the request for quotations but is not filed prior to the closing time for receipt of quotations.
3. Agency's request for clarification of a firm's quotation and acceptance of revised quotation is not legally objectionable under the informal procedures permitted for a small purchase. The language requesting quotations by a certain date cannot be construed as establishing a firm closing date for the receipt of quotations absent a late quotation provision expressly providing that quotations must be received by that date to be considered.

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### DECISION

ACCESS for the Handicapped protests the rejection of its quote and the issuance of a purchase order to Del-Val Driving Aids, Inc., under request for quotations (RFQ) No. N62269-89-Q-3056, issued by the Department of the Navy for furnishing and installing wheel chair lifts.

We dismiss the protest in part and deny it in part.

Three quotes were submitted by the December 14, 1988, closing date under the RFQ, which was issued under the small purchase procedures of Part 13 of the Federal Acquisition Regulation. The high quoter was excluded from consideration on the basis of price. On December 16, the Navy telephonically advised ACCESS that the "Carrier Lift" it offered was unacceptable because it was battery-powered.

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and did not meet the specification requirement for an AC-powered unit. ACCESS indicated that it had two other products that would meet the requirements, and the Navy asked for descriptive literature. By letter dated December 16, ACCESS submitted descriptive literature on these products, and by telefax of December 19, submitted pricing. The Navy requested clarifications from Del-Val and ACCESS. By telefaxed letter of December 20, Del-Val provided the necessary clarification and reduced its price. ACCESS provided the necessary clarification by telefax dated December 21.

The Navy found Del-Val's and ACCESS' responses technically acceptable and awarded a purchase order on December 21 to Del-Val, which had submitted the lowest quote. The Navy notified ACCESS of the award on January 6, and ACCESS protested to our Office on January 23.

ACCESS protests that its quote for the "Carrier Lift" model was low and should not have been rejected because the model complies with the Navy's requirements and is superior to the model chosen for award.

The Navy responds that this protest basis is untimely because ACCESS knew from its December 16 telephone conversation that its battery-driven system was unacceptable. According to the Navy, ACCESS demonstrated its knowledge in its December 16 letter to the Navy offering two alternate products and explaining that they both had the "220 + Volt AC single phase or three phase power that you requested." The letter further stated: "We strongly recommend, and urge you to consider the 'Carrier Lift' that we originally proposed. However, if you insist, we will be happy to provide any of the other products." ACCESS comments that it was not aware of a definite adverse decision when writing its December 16 letter, but rather understood that the Navy was still reviewing and studying bids.

We find this basis of protest untimely. Our Bid Protest Regulations provide that a protest must be filed within 10 working days after the basis of the protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). ACCESS was informed by telephone on December 16 that its quote was unacceptable because the Carrier-Lift model was battery-powered and did not meet the specification. Oral notification is sufficient to place a protester on notice of its protest bases, and a protester may not delay filing its protest until receipt of written notification confirming the existence of protestable issues. Servidyne, Inc., B-231944, Aug. 8, 1988, 88-2 CPD ¶ 121. Also, while a protester may choose to continue pursuing a

matter with the contracting agency instead of filing a protest, even after the agency has advised that it rejects the firm's position, but doing so does not toll the 10 working day period for filing a protest with our Office. St. Joseph Motor Lines, B-230211.2, May 6, 1988, 88-1 CPD ¶ 442. Here, ACCESS was told explicitly by the Navy that its battery-powered approach was unacceptable, and while its December 16 letter requested continued consideration of its approach, it clearly knew of the agency's position by that date. Accordingly, it was required to protest the Navy's rejection of its proposed approach within 10 days of December 16. Since it did not do so, the protest on this issue is untimely.

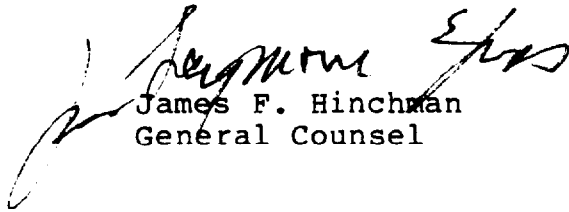
ACCESS further protests that the Navy's specifications were, in most part, copied word-by-word from the specification sheets of the model chosen for award, and included a feature that is unique to that model. These alleged improprieties were apparent on the face of the RFQ. Our Bid Protest Regulations require protests of alleged improprieties in a solicitation which are apparent prior to the closing date for initial quotations to be filed before that time. 4 C.F.R. § 21.2(a). Since ACCESS' protest on this issue was filed after the date for receipt of quotations, it is untimely and will not be considered. See Herman Miller Inc., B-230627, June 9, 1988, 88-1 CPD ¶ 549.

ACCESS also protests that the Navy acted unfairly in allowing Del-Val to lower its price on December 20. ACCESS complains that the Navy went the extra mile to see that ACCESS did not get the contract. We do not find the Navy's actions here objectionable. The RFQ was issued pursuant to the small purchase procedures, which are less formal than those usually followed in government procurement. Small purchase procedures set forth abbreviated competitive requirements designed to minimize administrative cost that otherwise might equal or exceed the cost of relatively inexpensive items. Moreover, a quotation, unlike a sealed bid or an offer (submitted in response to a request for proposals), is not a legally binding offer that can be accepted by the government to form a binding contract. The ensuing order from the government is the offer which the proposed supplier can accept, either through performance or by formal acceptance of the government's offer. FAR § 13.108. It follows then, that a quotation submitted under the government's small purchase procedures (which do not contain a "late" submission clause) can be revised prior to the time the government issues an order, because the language requesting quotations by a certain date cannot be construed as establishing a firm closing date for the receipt of quotations absent a late quotation provision

expressly providing that the quotations must be received by that date to be considered. See Oregon Innovative Products, B-231767, Aug. 2, 1988, 88-2 CPD ¶ 110. Thus, we do not find it legally objectionable that the contracting officer permitted Del-Val to revise its quote.

Further, we find that the protester has provided no proof in support of its allegation that the Navy was biased against it, and there is no evidence of bias in the record. Since ACCESS has not met its burden of proof, we regard its allegation as mere speculation. Contracting Programmers & Analysts, Inc., B-233377.2, Feb. 22, 1989, 89-1 CPD ¶ 190.

The protest is dismissed in part and denied in part.



James F. Hinchman  
General Counsel